



First-tier Tribunal for Scotland (Housing and Property Chamber)

Determination by First-tier Tribunal for Scotland (Housing and Property Chamber)

Statement of Reasons for Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (hereinafter referred to as “the tribunal”) under Section 28 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Case reference FTS/HPC/RN/25/1074

Parties

Mr. Michael Hier (Applicant and Landlord)

Mr. Frederick Parffrey (Respondent and former Tenant)

7 Sunningdale Place, Helensburgh G84 7JB (the Property)

The Tribunal consisted of: -

Mr Andrew Cowan - Chairperson

Ms. Carol Jones - Ordinary (Surveyor) member

Introduction: -

1. This is a reference to the tribunal in respect of the flatted property at 7 Sunningdale Place, Helensburgh G84 7JB. The landlord is Mr. Michael Hier. The tenant is Mr. Frederick Parffrey. The tenancy is a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act”).
2. On 28th January 2025 the landlord served a notice on the tenant under Section 22(1) of the 2016 Act indicating that the landlord intended to increase the rent on the property from £850.00 per calendar month to £975.00 per calendar month with effect from 1st May 2025.



3. The tenant timeously objected to that proposed increase by referring the proposed increase to the Rent Service Scotland.
4. By determination dated 4th March 2025, the rent officer fixed the rent at £917.33 per calendar month. In making that determination the rent officer found that the open market rent was £950 per calendar month and then applied the formula contained in section 31A of the 2016 Act which was inserted into that Act by the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024.
5. The Landlord appealed the rent officer's determination by application dated 6th March 2025 and the matter was referred to the tribunal and both parties were invited to make written representations.
6. Both parties were also notified that an inspection and hearing would take place and were invited to attend the inspection and hearing. The inspection took place at the property on 22 September 2025 at 10.00 a.m. The hearing took place on the same day at 11.30 a.m.

Findings in Fact

7. The property comprises a top floor flat in a three storey modern purpose built block constructed in 2002 by Turnberry Homes.
8. The accommodation comprises a hall, living room, dining-kitchen, bathroom and two double bedrooms, one with en-suite shower room and large walk in cupboard and the second with fitted wardrobes. There are french doors to the living room and dining kitchen. The gross internal area is approximately 92 square meters.
9. The property is located in the Colgrain district of Helensburgh in Argyll and Bute. It is situated overlooking Colgrain Bowling Green with the Firth of Clyde beyond. This location is approximately one mile east of the town centre and is well situated for local amenities and public transport.

Externally the building is consistent with its age and type of construction and is in reasonable order. The property has a secure door entry system and an allocated parking space in a car park situated to the rear of the block.



10. Internally the flat is in a reasonable condition and has been recently decorated prior to marketing. It has uPVC double glazed windows, gas central heating and the floors are carpeted to the living room/bedrooms with vinyl flooring to the dining-kitchen, bathroom and en-suite.
11. The landlord has provided blinds and curtains to all windows, and the kitchen has modern fitted units, an oven and hob with extractor hood and white goods comprising a fridge freezer and washing machine. The subjects are let unfurnished.

The Hearing

12. The hearing was attended by the Respondent, Mr. Frederick Parffrey. The Applicant did not attend the hearing.
13. In advance of the hearing the Tribunal had been advised that the Respondent had now left the property and that the tenancy between the parties had terminated. The application relates to rent due under the terms of the tenancy agreement for a period during which the Respondent continued to occupy the Property. The Tribunal accordingly continued to determine the application.
14. The tribunal had researched the available properties for rent within the area showing eight two-bedroom flats available for rent (including the Property) or where a let has been agreed. The rents were advertised at a range between £775 and £1,250 per calendar month.
15. During the hearing, the tribunal asked various questions of the Respondent. The tribunal explained to the Respondent that it was required to fix the rent based on the concept of market rent and explained the legal definition to the parties.
16. The tribunal noted that the Applicant had submitted that the open market rent for the Property was £975 per calendar month. The Applicant considered that the rent officer's finding that the open market rent for Property was £950 per calendar month was incorrect. In his written submission to the tribunal the Applicant stated that he believed the comparisons used by the rent officer were lacking transparency regarding their methodology and provided insufficient evidence, citing only two properties which were not substantially comparable to his own. The Applicant referred in his written submission to three two-bedroom properties which were advertised for rent at or above £975 per calendar month. These properties were



within the Helensburgh area. The Applicant considered that these properties were more comparable with the Property than the properties which had been used by the rent officer as comparable.

17. The Tribunal noted that the Respondent has now left the Property and that the Applicant has now marketed the Property on the open market. The Applicant has now agreed the terms of a new tenancy for the property and has agreed a rent of £975 per month.
18. The Respondent made specific reference to two flats which he considered were comparable to the Property. These were advertised at rents of £875 per month, The Applicant disputed that these properties were comparable as they were less spacious and did not have an en-suite shower room.
20. The Respondent indicated that he was happy to accept the rent officer's decision. He recognised however that the rent sought by the Applicant, at £975 per calendar month, was a strong indicator of the open market rent for the Property, particularly as the Applicant had now re-let the Property with a rent set at that level.

The Law

21. The Tribunal is bound to fix an open market rent for the subjects by applying the terms of the 2016 Act. The Tribunal is required to determine the rent at which, subject to certain assumptions in the Act, the Tribunal considers that the subjects might reasonably be expected to achieve if they were let on the open market by a willing landlord to a hypothetical willing tenant under a private residential tenancy.

Discussion and decision

22. The tribunal is aware that the two relevant methods of assessing the open market rent in Scotland are
 - (a) determining the open market rent by reference to market rents of comparable properties or
 - (b) determining the open market rent by reference to the anticipated annual return based on the capital value of the property. Neither of these methods is the primary method.



23. The task of determining an open market rent is a composite task that takes account of both of these methods. The appropriate method depends on the facts and circumstances of each case. The observations of the Lord President in ***Western Heritable Investment Co Ltd v Hunter*** (2004) and also in the case of ***Wright v Elderpark Housing Association*** (2017) reminds the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible. The predominant method of assessing the open market rent in Scotland is determining the open market rent by reference to the market rents of comparable properties. In this case the tribunal had no evidence of the capital value of the subjects
24. The tribunal accordingly considered a variety of properties which were available for let in the area and which were advertised on various property websites. The tribunal carefully considered the written submissions received from both parties.
25. The tribunal noted that the open market rent chosen by the rent officer was £950. The tribunal concluded that the preponderance of available evidence would suggest that the market rent may be slightly higher than the figure fixed by the rent officer. The tribunal noted that the Property had now been let at a monthly rent of £975 per calendar month. This was the best evidence of the open market rent for the Property and, having weighed the evidence available, the tribunal determined to fix the open market rent for the Property at £975 per calendar month.
26. In reaching this decision, the tribunal had regard to all the circumstances required to be taken into account in terms of Section 32 of the 2016 Act.
27. The tribunal, having decided that the open market rent for this property should be £975 per month, then required to apply the terms of section 31A of the 2016 Act which is in the following terms:-

31A

Determination of rent payable

(1) Where an order maker is to determine the rent payable under section 25(1) or (as the case may be) 29(1), the determination is to



be made on the basis that the rent payable is the lowest of—

- (a) the proposed rent,
- (b) the open market rent,
- (c) where the market difference is more than 6%, the permitted rent.

(2) The permitted rent is—

- (a) where the market difference is less than 24%, the calculated amount,
- (b) where the market difference is 24% or more, 12% more than the current rent.

(3) The calculated amount is the amount (to the nearest £1) determined using the formula—

$$\text{Amount (£)} = C \times \left(106\% + \frac{(D\% - 6\%)}{3} \right)$$

where—

C is the current rent,

D% is the market difference expressed as a percentage.

(4) In this section—

“the proposed rent” means the rent specified in accordance with section 22(2)(a)(i) in the rent-increase notice which prompted the referral,

“the current rent” means the rent payable under the tenancy immediately before the date on which the rent would have been increased in accordance with section 22(4) had a referral to the rent officer not been made,

“the market difference” means the percentage figure (to the nearest two decimal places) determined using the formula—

$$\text{The market difference expressed as a percentage (D\%)} = \left[\left(\frac{M - C}{C} \right) \times 100 \right] \%$$

where—

C is the current rent,

M is the open market rent,

“the open market rent” means the rent determined in accordance with section 32



28. These provisions, although now repealed, introduced a cap on rent increases in private residential tenancies where notice of the increase has been given on or after 1 April 2024 and before 1 April 2025. The maximum increase allowed is 12% of the current rent.
29. Having fixed the open market rent at £975 per month, the tribunal applied the tapering formula. The Tribunal determined that the maximum rent increase permitted was therefore 8.9% which means that the permitted rent due following the service of the notice of the rent increase is £925.65 per month.
30. The tribunal therefore determines that the rent to be payable by the Respondent in respect of the property is £925.65 per calendar month and that rent shall apply and take effect from 1st May 2025 taking into account the provisions of section 29(2) of the 2016 Act.
31. The decision of the Tribunal was unanimous

A Cowan

Date 22 September 2025

Andrew Cowan, Chairperson